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10/574,024	03/01/2007	Ian Walters	MBNZ 2 00023	8033
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Fay Sharpe LLP 1228 Euclid Avenue, 5th Floor The Halle Building Cleveland, OH 44115			EXAMINER	JUSKA, CHERYL ANN
ART UNIT	PAPER NUMBER	1794		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/574,024	<b>Applicant(s)</b> WALTERS ET AL.
	<b>Examiner</b> Cheryl Juska	<b>Art Unit</b> 1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 01 March 2007.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-30 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-30 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 23 March 2006 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/1648)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date: _____	6) <input type="checkbox"/> Other: _____

**DETAILED ACTION**

***Information Disclosure Statement***

1. The listing of references in the International Search Report is not considered to be an information disclosure statement (IDS) complying with 37 CFR 1.98. 37 CFR 1.98(a)(2) requires a legible copy of: (1) each foreign patent; (2) each publication or that portion which caused it to be listed; (3) for each cited pending U.S. application, the application specification including claims, and any drawing of the application, or that portion of the application which caused it to be listed including any claims directed to that portion, unless the cited pending U.S. application is stored in the Image File Wrapper (IFW) system; and (4) all other information, or that portion which caused it to be listed. In addition, each IDS must include a list of all patents, publications, applications, or other information submitted for consideration by the Office (see 37 CFR 1.98(a)(1) and (b)), and MPEP § 609.04(a), subsection I. states, "the list ... must be submitted on a separate paper." Therefore, unless listed on the accompanying PTO Form 892, *Notice of References Cited*, references cited in the International Search Report have not been considered. Applicant is advised that the date of submission of any item of information or any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the IDS, including all "statement" requirements of 37 CFR 1.97(e). See MPEP § 609.05(a).

***Specification***

2. The specification is objected to for the lack of the subheadings for the “Brief Description of the Drawings” and the “Detailed Description of the Invention.”

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 2 is indefinite because it is unclear if the “liquid curable rubber” is the same or different compound from the “curable base rubber low-viscosity component” recited in claim 1. For examination purposes, the claim is interpreted as if the two phrases are descriptive of the same compound.

6. Additionally, claim 2 is indefinite because it is unclear if the “non-liquid curable base rubber” is the same or different compound from the “curable base rubber” recited in claim 1. For examination purposes, the claim is interpreted as if the two phrases are descriptive of the same compound.

7. Claim 14 is indefinite because the scope of the claim is unclear. Does applicant intend to encompass a processed (i.e., cured not curable) rubber compound made by a process of roll-processing, extrusion, or flow molding? Or, does applicant intend to encompass a processable (i.e., uncured) rubber compound? Also, note claim 14 is unclear due to the product by process

by process format (i.e., compound processed by one or methods...obtainable by a method of claim 1). Claims 15-22 are similarly rejected.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 2, and 4-12 are rejected under 35 U.S.C. 102(b) as being anticipated by US 6,265,454 issued to McNutt et al.

McNutt discloses rubber compositions useful in making tires, wherein said composition comprises recycled tires as cured rubber crumb (abstract). The rubber composition includes the cured rubber crumb in the form of fine particles such as 90 mesh (about 0.16 mm) or smaller (col. 1, lines 54-58). The crumb rubber is present in the rubber composition in an amount ranging from 2-50 parts by weight (col. 2, lines 27-34). The rubber composition may comprise natural rubber, styrene-butadiene rubber (SBR), synthetic isoprene, etc. and may also include conventional rubber additives such as curing aids (col. 2, lines 39-65). Exemplary rubber compositions include (a) solution and/or emulsion SBR (i.e., liquid curable rubber), (b) natural rubber or butadiene rubber (i.e., non-liquid curable base rubber), (c) crumb rubber, (d) accelerators and sulfur (i.e., curing system), and (e) optional filler (i.e., silica) (Tables I - V). Exemplary amounts of crumb rubber are 10 pbw, 20 pbw, 30 pbw, 40 pbw, and 50 pbw (Table IV), while exemplary amounts of the solution and/or emulsion SBR (i.e., liquid curable rubber)

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range from about 65-70 pbw (Tables I - V). Exemplary amounts of filler include 0 pbw and 15 pbw (Tables I and II). The components of the rubber composition are separate prior to being mixed together in a Banbury mixer (col. 3, lines 16-26). The rubber composition may be processed as known in sheet form and molded to form tires (col. 3, lines 3-12).

Thus, McNutt explicitly teaches the invention of claims 1, 2, and 4-12 with the exception “whereby a curable compound which can be roll-processed is formed.” It has been held that the functional “whereby” statement does not define any structure and accordingly can not serve to distinguish. *In re Mason*, 114 USPQ 127. It is believed that the like rubber composition of McNutt is capable of being roll-processed. As such, claims 1, 2, and 4-12 are rejected as being anticipated by the McNutt reference.

10. Claims 1, 2, and 4-12 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 780430 issued to Burgoyne et al.

Burgoyne discloses a polymer-modified rubber composition comprising 5-60% vulcanized styrene-butadiene rubber crumb, 6-60% uncured rubber, 5-30% styrene-based thermoplastic resin, 1-10% homogenizing agent, and 1-10% curing agent (abstract). The crumb rubber is preferably obtained from recycled materials and is sized between 10-80 mesh (0.18 - 2.0 mm) (page 2, line 51-page 3, line 3). A preferred uncured rubber component is masticated styrene-butadiene rubber (page 4, lines 12-20). The components of the rubber composition are blended together with a mixing apparatus and molded and cured (page 4, lines 45-59). The rubber composition may also include uncured natural rubber (page 5, lines 11-14). In one embodiment, the rubber composition includes 30 mesh tire crumb, uncured SBR, and low

molecular weight styrene-butadiene copolymer (page 6, Comparative Example 1 and Example 1).

Thus, Burgoyne explicitly teaches the invention of claims 1, 2, and 4-12 with the exceptions (a) "whereby a curable compound which can be roll-processed is formed" and (b) the amount of inert filler. Regarding the former exception, it has been held that the functional "whereby" statement does not define any structure and accordingly can not serve to distinguish. *In re Mason*, 114 USPQ 127. It is believed that the like rubber composition of Burgoyne is capable of being roll-processed. With respect to the latter exception, the reference fails to teach the addition of any inert filler, which anticipates applicant's recitation of "not more than 5 wt% inert filler" since this range includes zero inert filler. As such, claims 1, 2, and 4-12 are rejected as being anticipated by the Burgoyne reference.

***Claim Rejections - 35 USC § 102/103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 3 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over the cited McNutt reference.

Claim 3 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over the cited McNutt reference.

McNutt and Burgoyne fail to explicitly teach the recited Mooney viscosity. However, it is reasonable to presume that said viscosity is inherent to each invention. Support for said presumption is found in the use of similar materials (i.e., liquid rubber component) and in the similar production steps (i.e., mixing of various rubber components and molding) used to produce the rubber material. The burden is upon applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 495. In the alternative, the claimed viscosity would obviously have been provided by the processes disclosed by McNutt and Burgoyne. Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102. Therefore, claim 3 is rejected.

***Claim Rejections - 35 USC § 103***

13. Claims 13-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited McNutt reference in view of US 6,808,588 issued to Streeton et al.

Claims 13-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Burgoyne reference in view of US 6,808,588 issued to Streeton et al.

McNutt and Burgoyne fail to explicitly teach forming the rubber composition into a coherent self-sustaining web and superimposing a fabric layer to form a floor mat. However, such methods of making a floor mat are known in the art. For example, Streeton discloses a continuous floor mat making process and product, wherein said floor mat comprises a textile upper surface and a rubber backing (abstract). A continuous roll of unvulcanized rubber is joined to either a continuous roll of textile material or textile panels during a vulcanization or curing process (abstract). Said textile upper surface may be a tufted substrate (col. 2, lines 5-14).

The rubber backing may have a thickness of about 15-200 mils (about 0.4 – 5 mm) (col. 3, lines 5-10). The vulcanization process occurs on a conveyor belt, which acts as a molding apparatus, under uniform temperature and pressure to bond the textile to the rubber backing (e.g., compression molding) (col. 2, lines 34-45 and col. 3, lines 12-43).

While neither McNutt nor Burgoyne teach the use of the rubber composition for a floor mat backing, it would have been readily obvious to substitute said rubber compositions, which are capable of being roll-processed, for the roll of unvulcanized rubber of the Streeton invention. Motivation to do so would be to expand the number of applications of said rubber compositions and to “green” the floor mat of Streeton by employing recycled crumb rubber in the rubber backing. Thus, claims 13-28 and 30 are rejected as being obvious over the cited prior art.

Regarding claim 29, the cited prior art fails to teach a suitable density for the rubber backing layer. However, it would have been obvious to one skilled in the art to employ the recited density, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. Thus, claim 29 is also rejected as being obvious over the prior art.

### ***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the

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examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached at 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

16. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*/Cheryl Juska/  
Primary Examiner  
Art Unit 1794*

cj  
March 5, 2009